



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

December 19, 2024

By ECF

Hon. Valerie Caproni
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *American Civil Liberties Union Foundation v. U.S. Immigration and Customs Enforcement*, No. 24 Civ. 7183 (VEC)

Dear Judge Caproni:

This Office represents Defendant U.S. Immigration and Customs Enforcement (“ICE”) in the above-referenced action. Plaintiff American Civil Liberties Union Foundation (“ACLU”) brings suit pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). The parties respectfully submit a joint status update, in accordance with the Court’s order of November 14, 2024, ECF No. 22.

On November 14, 2024, ICE made its first production to Plaintiff of responsive and non-exempt records, which included records responsive to Part 2 of Plaintiff’s first FOIA request. Specifically, in connection with the November release, ICE processed 442 pages of potentially responsive records. Of these 442 pages, ICE produced 222 pages to Plaintiff, which were withheld in part pursuant to FOIA Exemptions (b)(6), (b)(7)(C), and (b)(7)(E); determined that 107 pages were duplicates; and sent 74 pages to a third party for a submitter’s notice pursuant to 6 C.F.R. § 5.7. On December 10, 2024, ICE produced 12 pages of these 74 pages to Plaintiff, withheld in part pursuant to FOIA Exemptions (b)(6) and (b)(7)(E). ICE also withheld 62 of these 74 pages in full pursuant to Exemptions (b)(3)(A) and (b)(4). ICE has based its (b)(3)(A) exemption on 41 U.S.C. § 423(a)(1). Additionally, 39 pages were referred to the U.S. Fish and Wildlife Service for a direct response to Plaintiff in November, which Plaintiff has since received.

On December 10, 2024, ICE made its second production to Plaintiff of responsive and non-exempt records. In connection with the December release, ICE processed 380 pages of potentially responsive records, which included records from a search of custodian William Burger for responses to RFI Notice ID Number 2024ICEMULTISTATE and records from a search of custodian John Cappello for responses to RFI Notice ID Number ICEMULTISTATE01. Of the 380 processed pages, ICE produced 23 pages to Plaintiff, which were withheld in part pursuant to FOIA Exemptions (b)(6), (b)(7)(C), and (b)(7)(E); determined that 98 pages were duplicates and 6 pages were non-responsive; and sent 253 pages

to third parties for a submitter's notice pursuant to 6 C.F.R. § 5.7. On December 12, 2024, Plaintiff sent a letter to ICE requesting clarification of its production and withholdings, including the status and quantity of documents pending third party review under 6 C.F.R. § 5.7, and requesting production of responsive information subject to third party review that does not constitute confidential commercial information. ICE responded to Plaintiff's inquiry by email on December 18, 2024.

ICE is awaiting return of the 253 pages it recently sent to third parties for a submitter's notice, and anticipates being able to produce non-exempt portions thereof by January 15, 2025. Consistent with Section 1.c of the parties' November 13, 2024, submission, ECF No. 21, ICE has already processed records from searches of ICE's Office of the Principal Legal Advisor's Commercial and Administrative Law Division (CALD) and ICE Enforcement and Removal Operations' Field Office Operations Division and Custody Management Division, and produced any responsive, non-exempt records from those searches. Thus, with next month's production of the records currently with third parties for a submitter's notice, ICE will have completed its processing of potentially responsive records and its production of responsive, non-exempt records.

The parties will provide a further status update to the Court on or before January 22, 2025. We thank the Court for its consideration.

Respectfully submitted,

EDWARD Y. KIM
Acting United States Attorney, SDNY
Attorney for Defendant

By: /s/ Jessica F. Rosenbaum
JESSICA F. ROSENBAUM
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2777
E-mail: jessica.rosenbaum@usdoj.gov

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
Attorney for Plaintiff

By: /s/ Eunice H. Cho
EUNICE H. CHO*
Senior Staff Attorney
American Civil Liberties Union
National Prison Project
915 15th Street NW, 7th Floor
Washington, D.C. 20005
Telephone: (202) 548-6616
Email: echo@aclu.org
*admitted *pro hac vice*